No. 91-164

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

THOMPSON/CENTER ARMS COMPANY,
A DIVISION OF THE K.W. THOMPSON
TOOL COMPANY, INC.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

REPLY BRIEF FOR THE PETITIONER

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

TABLE OF AUTHORITIES

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1. Respondent argues (Resp. Br. 6-14) that our interpretation of the term "rifle" in the National Firearms Act is incorrect, because NFA definitions of "machinegun," "silencer," and "destruction device" all include combinations of parts, see 26 U.S.C. 5845(b), 5845(a)(7), 5845(f), while the NFA definition of "rifle" does not expressly refer to the status of a combination of parts comprising a complete, but partially unassembled, rifle.

Our opening brief shows (at 12 nn.10-11, 19-26) that, at least with respect to the statutory definitions of "machinegun" and "silencer," Congress added "combination of parts" language only after judicial

decisions (as well as consistent administrative practice, see pp. 7-13, *infra*) had interpreted those provisions to include combinations of parts, in effect ratifying those decisions.[1] See *United States* v. *Lauchli*, 371 F.2d 303, 311-313 (7th Cir. 1966) (machineguns); *United States* v. *Kokin*, 365 F.2d 595, 596 (3d Cir.), cert. denied, 385 U.S. 987 (1966) (machineguns); *United States* v. *Endicott*, 803 F.2d 506, 508-509 (9th Cir. 1986); (silencers); *United States* v. *Luce*, 726 F.2d 47, 48-49 (1st Cir. 1984) (silencers). Thus, the consistent trend of the case law, well-known to Congress, was to interpret an NFA "firearm" to include not only a complete, fully assembled weapon that came within the NFA's categories, but also a complete, but partially unassembled, weapon that came within the NFA's categories. The fact that Congress ratified that interpretation with respect to "machineguns," "silencers," and "destructive devices"—the first two of which had been the subject of appellate decisions—hardly shows that it intended that it should not be employed with respect to the remaining NFA categories, such as "rifles."[2]

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[1] To be sure, Congress also added an intent requirement to its definitions of "silencer" and "destructive device." Yet, if the purpose of the amendment was to *narrow* the pre-existing, consistent judicial and administrative interpretation of the statute with respect to silencers and destructive devices, Congress's failure similarly to redefine the term "rifle" suggests simply that Congress did *not* intend similarly to narrow the definition of rifle.

[2] Indeed, as our opening brief notes (at 23), Congress expressly referred to the already-existing "prohibition on selling complete kits" when it defined "silencer" in 1986 to include complete and incomplete silencer kits. H.R. Rep. No. 495, 99th Cong., 2d Sess. 21 (1986).

In addition, the NFA's definition of "rifle" is in one respect broader than its definitions of "machinegun," "silencer," or "destructive device." Under the NFA, a "rifle" is "a weapon * * * made * * * and intended to be fired from the shoulder." 26 U.S.C. 5845(c).[3] The term "make" does not appear in the NFA definitions of "machinegun," "silencer," or "destructive device." Yet, the NFA defines "make," as well as its "various derivatives," to include "putting

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[3] Quoting (Resp. Br. 8 n.8) the House committee report for the 1954 revision of the Internal Revenue Code, which added the definition of "rifle" to the NFA, respondent contends that the definition was adopted "to narrow the scope of rifles being interpreted as subject to the NFA." Resp. Br. 8. The quotation in respondent's brief, however, contains an ellipsis in place of language making clear that Congress intended to address a more particular problem. The material omitted from the ellipsis is:

> For example, under a technical interpretation of the term "firearm," blunderbusses, muzzle-loading shotguns, and other ancient or antique guns have been considered subject to the National Firearms Act and in many instances the requirements thereof have been imposed. As a result of these interpretations, over a period of years, restrictions have been imposed on a certain class of persons, namely, antique gun collectors, and it is felt that these restrictions should be removed in pursuance of the clearly indicated congressional intent to cover under the National Firearms Act only such modern and lethal weapons, except pistols and revolvers, as could be used readily and efficiently by criminals or gangsters.

H.R. Rep. No. 1337, 83d Cong., 2d Sess. A395 (1954). While the report makes clear that Congress intended to narrow the statute to exclude "blunderbusses, muzzle-loading shotguns, and other ancient or antique guns" from the Act, nothing in the report suggests that Congress intended any retreat from its requirement that short-barrel rifles be taxed and registered under the NFA.

together * * * or otherwise producing a firearm." 26 U.S.C. 5845(i). Nothing in the statute requires that the "putting together" constitute a complete assembly; if there were any doubt on that point, the "otherwise producing" clause lays it to rest. Thus, the statutory definition of "rifle" was in no need of amendment to make clear that a complete, but partially unassembled, short-barrel rifle is an NFA firearm.

2. Respondent points out that the NFA provides that a "rifle" must be "intended to be fired from the shoulder," 26 U.S.C. 5845(c), and asserts that no one "did or would possess a pistol and carbine kit with the intent to make a weapon with a short barrel to be fired from the shoulder." Resp. Br. 18. Respondent, however, does not deny that its unit consisting of a pistol plus conversion kit containing a shoulder stock is designed for use as a "rifle" that is "intended to be fired from the shoulder." Nor can respondent deny that the unit is designed and marketed in a manner that enables the purchaser, at his option, readily to assemble it into a short-barrel rifle, to be fired from the shoulder. The particular uses that particular purchasers will make of the unit obviously is not a matter within respondent's control. Nothing in the NFA requires that a short-barrel rifle is subject to tax and registration only if its manufacturer intends that it be assembled with a short barrel. See 26 U.S.C. 5845(a)(4).[4] And, in any event, by producing and selling

[4] This case is not a criminal prosecution, and the intent requirements and other elements of a criminal offense under the NFA's criminal enforcement provisions, see 26 U.S.C. 5861 and 5871, are accordingly not at issue. Generally, in criminal prosecutions under the NFA, the government must prove that the defendant knew that the weapon at issue was a firearm in the general sense, although he need not know that the weapon was specifically covered by the NFA's tax and registration requirements. See, *e.g.*, *United States* v. *DeBartolo*, 482 F.2d 312, 316 (1st Cir. 1973); *United States* v. *Freed*, 401 U.S. 601, 607 (1971); *United States* v. *Shilling*, 826 F.2d 1365, 1368 (4th Cir. 1987), cert. denied, 484 U.S. 1043 (1988); *United States* v. *Cowper*, 503 F.2d 130, 132 (6th Cir. 1974), cert. denied, 420 U.S. 930 (1975); *United States* v. *Ranney*, 524 F.2d 830, 832 (7th Cir. 1975), cert. denied, 424 U.S. 922 (1976); *Morgan* v. *United States*, 564 F.2d 803, 805 (8th Cir. 1977); *United States* v. *Thomas*, 531 F.2d 419, 420 (9th Cir.), cert. denied, 425 U.S. 996 (1976); *United States* v. *Mittleider*, 835 F.2d 769, 774 (10th Cir. 1987), cert. denied, 485 U.S. 980 (1988); *United States* v. *Gonzalez*, 719 F.2d 1516, 1522 (11th Cir. 1983), cert. denied, 465 U.S. 1037 (1984). Some courts have held that, in some doubtful cases, the government must prove as well that the defendant had fair notice the weapon was of a type that was subject to the NFA's requirements. *United States* v. *Anderson*, 885 F.2d 1248, 1251 (5th Cir. 1989) (en banc); *United States* v. *Williams*, 872 F.2d 773, 777 (6th Cir. 1989); cf. *United States* v. *Herbert*, 698 F.2d 981, 986 (9th Cir.), cert. denied, 464 U.S. 821 (1983). No court, however, has engrafted onto the statute the further requirement that the defendant must specifically intend to violate the NFA.

a weapon designed to be assembled with equal ease as a short-barrel rifle or as a long-barrel one, respondent satisfies any intent requirement implied by the statute.

3. Respondent argues that Treasury's interpretation of the NFA is entitled to no deference because ambiguities in tax statutes should be construed against the government (see Resp. Br. 21-22) and because the NFA "provides serious criminal penalties for violation, and does not even have a willfulness requirement" (Resp. Br. 22-23).

As we explain in our opening brief (at 15 & n.15), this Court has long held that Treasury regulations "if

found to 'implement the congressional mandate in some reasonable manner,' must be upheld." *United States* v. *Cartwright*, 411 U.S. 546, 550 (1973), quoting *United States* v. *Correll*, 389 U.S. 299, 307 (1967). Accord *Commissioner* v. *Portland Cement Co.*, 450 U.S. 156, 169 (1981) (citing cases); *Helvering* v. *Winmill*, 305 U.S. 79, 83 (1938). Neither case cited by respondent (Resp. Br. 21-22) is to the contrary. *Gould* v. *Gould*, 245 U.S. 151, 153 (1917), involved a pure question of statutory construction, uninfluenced by any administrative construction of the statute. In *White* v. *Aronson*, 302 U.S. 16, 20 (1937), the Court construed a tax statute in favor of the taxpayer where the taxpayer's position was favored both by ordinary commercial use of the language employed in the statute and by consistent administrative practice—apparently known to Congress at the time it re-enacted the statute without material change—until just prior to the rulings. 302 U.S. at 20. In fact, because the established administrative construction of the statute in *White* favored the taxpayer, the case weakens, rather than strengthens, respondent's contention that deference is not owed to Treasury's construction of tax statutes.

Nor is respondent correct in treating the NFA as a criminal statute (see Resp. Br. 22-23, 26 n.34), and thus subject to the rule of lenity. This Court has recognized that the NFA is not a criminal statute, see *Sonzinsky* v. *United States*, 300 U.S. 506, 513 (1937) ("Nor is the subject of the tax described or treated as criminal by [the NFA]."), and that "the acts of making and transferring firearms are broadly defined," *Haynes* v. *United States*, 390 U.S. 85, 88 (1968). Although the NFA's provisions, like those of any tax statute, may be invoked in the context of a criminal

prosecution, that fact alone does not convert it into a criminal statute.[5]

4. Respondent contends (Resp. Br. 26-29) that the government's interpretation of the statute has been inconsistent. Under that interpretation, manufacture or sale of a pistol alone does not constitute manufacture or sale of a short-barrel rifle. Nor does manufacture or sale of individual parts of a short-barrel rifle, such as a rifle stock and barrel, that are insufficient, when assembled, to constitute a complete weapon. However, a manufacturer's marketing of all of the parts of a short-barrel rifle, such as a pistol with a readily attachable rifle stock, constitutes manufacture and sale of a short-barrel rifle under the NFA. Under the consistent administrative interpretation, the fact that a manufacturer makes or sell a longer barrel together with the pistol and attachable rifle stock is irrelevant; the addition of that part, which a consumer can choose to attach to the short-barrel rifle or not, cannot convert sale of a firearm into sale only of a long-barrel rifle. This interpretation dates back at least to 1954; only one document cited by respondent—an unpublished letter written by a BATF official, see note 8, *infra*—suggests otherwise, and long before this litigation began the government made clear that that letter was mistaken.

a. The published revenue rulings relating to the question in this case have consistently adopted the above interpretation. In 1954, the Treasury issued Rev. Rul. 54-606, 1954-2 C.B. 33, which stated that

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[5] Indeed, respondent itself commenced this action as a civil action for a refund of its tax payment pursuant to 26 U.S.C. 7422. See *Thompson/Center Arms Co.* v. *Baker*, 686 F. Supp. 38, 43 (D.N.H. 1988).

"[t]he possession or control of sufficient parts to assemble an operative firearm constitutes the possession of a firearm." That Ruling, whose plain language directly controls this case, applied to *all* firearms under the NFA, not merely short-barrel rifles.[6]

Two years later, in Rev. Rul. 56-296, 1956-1 C.B. 553, the Treasury determined that single-shot pistols whose receivers are "susceptible but not confined to use in either a single shot pistol or rifle" are not firearms under the NFA. That ruling is perfectly consistent with Treasury's position both in Rev. Rul. 54-606 and today. There is no indication that the pistols at issue in Rev. Rul. 56-296 were possessed together with attachable stocks. Possession of a pistol —without simultaneous possession of an attachable stock that would make it operable as a short-barrel rifle—does not constitute possession of a firearm.

As respondent mentions (Resp. Br. 28), in 1959, Treasury determined that possession of a pistol that,

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[6] Respondent cites (Resp. Br. 27) a 1952 regulation, codified at 26 C.F.R. 179.29 (1955), which defined "making of a firearm" as "the production or creating of a firearm by any means, whether by manufacture, putting together of parts, alternation, any combination thereof, or otherwise, and by any process of manipulation or transformation of any other weapon." That definition, by including "by putting together of parts * * * or otherwise," supports our position. Like the present statutory definition of "make" in 26 U.S.C. 5845(i), see pp. 3-4, *supra*, the regulation does not require that *all* parts be put together before a firearm is created. And the term "or otherwise" indicates that the regulation was not intended to give an exclusive list of all of the ways in which a firearm can be made. The Department of the Treasury addressed the subject of complete, but partially unassembled, firearms two years later, in the Revenue Ruling discussed in text.

"[w]ith the pistol barrel removed, * * * can be inserted into a one piece rifle frame with a .22 caliber barrel having a length of over 16 inches" was not possession of a firearm. Rev. Rul. 59-340, 1959-2 C.B. 375. The weapon at issue in that ruling could be assembled only as a pistol or as a "rifle with a * * * barrel having a length of over 16 inches." *Ibid.* Since it was apparently not possible to assemble the weapon as a rifle with a barrel of less than 16 inches, it was not a firearm under the NFA. Had respondent manufactured a pistol with an attachable stock and a long barrel such that it was not functional as a rifle unless *both* the shoulder stock *and* the long barrel were attached, Rev. Rul. 59-340 would control this case. The crucial distinction overlooked by respondent is that the weapon at issue here is fully functional as a short-barrel rifle, and thus is a firearm under the NFA.

In 1961, Treasury issued two rulings that continued its consistent interpretation of the statute and apply directly to this case. In Rev. Rul. 61-45, 1961-1 C.B. 663, the Department ruled that a pistol "having a barrel less than 16 inches in length with an attachable shoulder stock affixed, *or held by the possessor of such a weapon*, is a short barrel rifle and, hence, within the purview of the National Firearms Act" (emphasis added). In Rev. Rul. 61-203, 1961-2 C.B. 224, Treasury restated the principle of Rev. Rul. 61-45 and added that a pistol that "has a barrel of 16 inches or more in length" is not a firearm, "even though such weapon has an attached or attachable shoulder stock." The two 1961 rulings thus establish that pistols with short barrels and attachable shoulder stocks are firearms, while pistols with long barrels (greater than 16 inches) and attachable shoulder

stocks are not firearms. The weapons at issue here are plainly within the former category.[7]

b. Respondent contends that Treasury's position has not been consistent because Rev. Rul. 54-606, the first ruling to address the "combination of parts" issue under the NFA, was withdrawn in 1972. In that year, Treasury determined in Rev. Rul. 72-178, 1972-1 C.B. 423, that Rev. Rul. 54-606, along with some 126 other revenue rulings, was "obsolete." That position, however, did not "repudiate[]" the substantive rule announced in Rev. Rul. 54-606, as respondent contends. Resp. Br. 38.

First, Treasury did not withdraw or declare obsolete the two Revenue Rulings that are most relevant to this case—Rev. Ruls. 61-45 and 61-203. Those two rulings specifically address the issue here—the classification of pistols held together with parts sufficient to convert them into short-barrel rifles. Without regard to Rev. Rul. 54-606, those two rulings alone establish that the interpretation at issue here is long-standing and consistent.

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[7] Respondent repeatedly comments (Resp. Br. 2 n.2, 14, 29 n.38, 33 n.4) that Treasury has exempted from the NFA registration and tax requirements a number of firearms that the Secretary has determined are "collector's item[s] and [are] not likely to be used as * * * weapon[s]." 26 U.S.C. 5845(a). The question whether the Secretary should have exempted respondent's Contender weapon was not litigated in this case and is not before this Court. Moreover, the fact that the Secretary has exempted certain weapons that respondent claims to be similar to his Contender pistol with conversion kit suggests, if anything, the consistency of the administrative interpretation of the statute. If the exempted weapons were not otherwise thought to be NFA "firearms," no purpose would have been served by exempting them from the NFA's requirements.

Second, as Rev. Rul. 72-178, 1972-1 C.B. 423, makes clear, one of the bases for the declaration of obsolescence was that Rev. Rul. 54-606, like the other 126 itemized rulings, was "inapplicable *either in whole or in part* to the current law and regulations" (emphasis added). Rev. Rul. 54-606 applied not only to pistols sold with attachable parts for conversion to short-barrel rifles, but also more generally to combinations of parts sufficient to assemble any firearm. In the Gun Control Act of 1968, Pub.L. No. 90-618, Tit. II, § 201, 82 Stat. 1231, Congress incorporated in the statutory definitions of "machinegun" and "destructive device" language making clear that those terms include a combination of parts that can be assembled, respectively, into a machinegun or a destructive device. Thus, Rev. Rul. 54-606 was in part superseded by the specific statutory terms of the 1968 statute *with respect to machineguns and destructive devices*. By declaring Rev. Rul. 54-606, but not Rev. Ruls. 61-45 and 61-203 "obsolete," Treasury simply recognized that fact. Its action did not in any way repudiate the interpretation embodied in the "non-obsolete" portion of Rev. Rul. 54-606 and carried forward in Rev. Ruls. 61-45 and 61-203.

Finally, a Treasury determination that a previous ruling is "obsolete" does not amount to a repudiation of the substance of the prior ruling. As Treasury explained when initiating its process of periodic review of past rulings, a revenue ruling is declared obsolete when it is "not * * * determinative with respect to future transactions." Rev. Proc. 67-6, 1967-1 C.B. 576, 578. A ruling may attain that status, *inter alia*, "because of amendment of the statute, revision of the regulations, application of court decisions, etc." *Ibid.* Treasury expressly cautioned that "[t]he public an-

nouncement that a particular ruling is [obsolete] *does not necessarily mean that the conclusion or the underlying rationale has no current applicability.*" *Ibid.* (emphasis added). See also 4 *BATF Quarterly Bulletin* at vi. (1990). By contrast, a ruling is "revoked" when "the position in the previously published ruling is not correct and the correct position is being stated in the new ruling. Rulings which have been revoked have no further effect." *Ibid.* Rev. Rul. 54-606 has never been "revoked."

c. Respondent cites (Resp. Br. 3-4, 29-30) a number of informal exchanges of unpublished letters between private parties and BATF officials in support of his contention that the administrative interpretation of the NFA has been inconsistent. Even if those letters contradicted Treasury's interpretation of the NFA as found in published rulings—and a careful reading of most of them discloses a basically consistent course of administrative interpretation [8]—such

[8] A number of the letters cited by respondent appear to have involved either manufacture of complete, long-barrel rifles (C.A. App. 31), or the sale of a shoulder stock for a pistol, without simultaneous sale of the other parts of a weapon (C.A. App. 35-36, 38), neither of which are NFA firearms. The only letter cited by respondent that appears to depart from Treasury's consistent position regarding complete, but partially unassembled, weapons is an unpublished, 1973 letter from the Assistant Director of Technical and Scientific Services at BATF. See C.A. App. 34. The letter states that the sale of an unregistered "Sportsmans Kit, consisting of a Colt Trooper revolver with a barrel length of 16 inches, an interchangeable 4-inch barrel and the RMAC gun rest" would not violate the NFA. That letter was written by a subordinate agency official and contradicted the official administrative interpretation expressed in published rulings long before the letter was written. In addition, respondent was on notice that the letter contradicted the agency's formal position before this litigation was commenced. When respondent's counsel brought the letter to the attention of Treasury officials in 1985, he was informed by letter that "[t]he position stated in the 1973 letter involving the sportsman's kit is not consistent with ATF's published rulings or the case law before or after 1973, and is incorrect." C.A. App. 44.

unpublished, informal letters, often written by subordinate agency officials, could not disprove our contention that Treasury's administrative interpretation has been consistent. Under 26 U.S.C. 6110(j)(3), "[u]nless the secretary otherwise establishes by regulations, a written determination may not be used or cited as precedent." See 27 C.F.R. 71.41(d)(iii)(B) (published revenue rulings—but not unpublished rulings or decisions—"may be cited and relied upon.") Cf. *Rowan Cos., Inc.* v. *United States*, 452 U.S. 247, 261 n.17 (1981). In addition, as to the letters cited by respondent, the context in which they were written—including the individuals to whom they were addressed, the questions asked by these individuals, and the nature of contemporaneous or prior conversations or letters between the parties that might clarify the meanings of the letters—is in many cases unclear, making their interpretation particularly perilous.

5. Respondent argues that our interpretation of the statute does not draw appropriate distinctions among different sorts of weapons. For example, respondent repeatedly notes (Resp. Br. 3, 6, 7, 9 n.10, 14 n.16, 15, 28) that, under our interpretation, a conventional, long-barrel rifle is not a short-barrel rifle under the NFA, despite the fact that it can be made into one by sawing off the barrel. Similarly, respondent states in a number of places (Resp. Br. 3, 6, 12-13, 16-17, 18-19, 20-21) that, under our interpretation, separate marketing of a complete Contender pistol and a complete Contender long-barrel

rifle does not constitute sale of an NFA "firearm," while marketing of a Contender pistol together with one part of a Contender rifle—the shoulder stock—does constitute sale of an NFA "firearm."

The short answer to respondent's contention, as our opening brief explains (at 15 & n.15), is that any effort to administer a complex tax collection and registration scheme, such as the NFA, requires the drawing of lines.[9] Congress has entrusted the administration of the NFA to the Department of the Treasury. See 26 U.S.C. 7805; 37 Fed. Reg. 11,696 (1972) (delegation of regulatory authority to BATF). Consequently, Treasury's efforts to draw the necessary lines "in this area of limitless factual variations," *United States* v. *Correll*, 389 U.S. 299, 307 (1967), are entitled to considerable deference.

Treasury's interpretation of the statute is sound. Long-barrel rifles are not NFA firearms, despite the fact that their barrels can be sawed off, for (at least) three reasons. First, the NFA itself plainly subjects only short-barrel rifles—not long-barrel rifles—to taxes and registration as firearms. See 26 U.S.C. 5845(a). Hence, an interpretation of the statute that would make all long-barrel rifles into firearms would be in tension with the statutory language itself. In addition, there is an important distinction

[9] Even respondent concedes that certain lines must be drawn. Thus, respondent would apparently concede that possession of a short-barrel rifle with bolt detached—but easily attachable—would constitute possession of a short-barrel rifle under the NFA. See Resp. Br. 19 n.23. Respondent also argues that "[a] 'conversion kit' to make an UZI short barrel rifle is clearly not analogous to a Contender carbine kit to make a long barrel rifle" (Resp. Br. 29), thus suggesting that respondent might agree that such a UZI conversion kit would be an NFA firarm.

between respondent's weapon and a rifle that has been altered by sawing off the barrel. Once an individual alters a long-barrel rifle by sawing off the barrel, there is presumably no easy way to re-attach the sawed-off portion of the barrel to re-create a weapon that appears not to be subject to the NFA. With respondent's Contender pistol plus conversion kit, however, an individual quickly and easily can convert a non-NFA pistol into an NFA firearm and back by starting with a Contender pistol and then attaching and removing the shoulder stock. Treasury reasonably determined that the easy conversion of such systems into and out of the zone of firearm regulation poses too great a risk that individuals possessing such systems could evade NFA regulation and avoid detection.

Similarly, as we explain in our opening brief (at 16), Treasury reasonably has determined that separate marketing of two complete, assembled weapons—a Contender pistol and a Contender long-barrel rifle—does not constitute marketing of a short-barrel rifle, while marketing of one complete weapon (a Contender pistol) plus some parts of another weapon (the shoulder stock from respondent's kit) does.[10] That distinction is based on the statutory distinction between long- and short-barrel rifles. Manufacture and sale of each weapon separately—as well as separate possession by the manufacturer of both weapons in the course of conducting separate manufacturing and

[10] Contrary to respondent's assumption (Resp. Br. 12-13, 16-17, 19, 20-21), Treasury has never determined that mere possession of two receivers, together with interchangeable parts sufficient to make one complete pistol and one complete long-barrel rifle, could not constitute possession of a firearm.

marketing operations, see Resp. Br. 16—does not constitute manufacture or sale of a firearm.

6. Finally, we note again that Congress has made the determination that short-barrel rifles are subject to the tax and registration provisions of the NFA. Of no relevance here is respondent's apparent belief (Resp. Br. 2, 14) that Congress erred in making that determination because concealable, short-barrel rifles are not useful for criminal purposes. The criminal utility of short-barrel rifles is not at issue in this case. If respondent believes such weapons do not require regulation under the NFA, it should address its legislative proposals to Congress, not this Court. Moreover, respondent's argument in this case would not merely remove its particular pistol plus conversion kit from coverage as an NFA firearm; it would also remove any complete, but partially unassembled, short-barrel rifle (including a highly dangerous semi-automatic weapon) or shotgun, see 26 U.S.C. 5845(a)(1), or "any other weapon" as defined in the NFA, see 26 U.S.C. 5845(a)(5), from coverage as an NFA firearm.[11] Despite respondent's evident disdain (Resp. Br. 14) for Congress's desire to tax and register such

[11] Respondent asserts that "[t]he [Federal Circuit's] opinion is not a serious threat to the enforcement of the NFA because it does *not* require that just *any* NFA 'firearm' be assembled" and "[t]he opinion does not address other NFA 'firearms' except to acknowledge that some types (such as machinegun[s]) need not be assembled." Resp. Br. 14. Yet, the reasoning advanced by respondent and adopted by the court of appeals makes no distinction between the various categories of NFA firearms—rifles, shotguns, and "any other weapon" as defined in the NFA—that do not have "combination of parts" language in their definitions. With respect to each of them, a manufacturer could similarly circumvent tax and registration provisions by marketing complete, but partially unassembled, weapons.

weapons, respondent's position would pose a substantial threat to enforcement of the NFA.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

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